



PRO  
MAR 30 2022  
RECEIVED

*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

PIEDMONT REGIONAL OFFICE  
4949-A Cox Road, Glen Allen, Virginia 23060  
(804) 527-5020 FAX (804) 698-4178

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Andrew R. Wheeler  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

James Golden  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY  
FOR  
VIRGINIA PENINSULAS PUBLIC SERVICE AUTHORITY VEHICLE  
MAINTENANCE FACILITY  
VAR10N318**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48 between the State Water Control Board and Virginia Peninsulas Public Service Authority, regarding the Virginia Peninsulas Public Service Authority Vehicle Maintenance Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulation.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “2019 Permit” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
2. “BMP” means Best Management Practice

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "EPA" means the United States Environmental Protection Agency
10. "Facility" or "Site" means the Virginia Peninsulas Public Service Authority Vehicle Maintenance Facility located at the intersection of Clancie Road and Enterprise Lane in King and Queen County, Virginia, from which discharges of stormwater associated with construction activity occurred.
11. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
12. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
13. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
14. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.

15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
16. "Pollution" means "such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are 'pollution.'" Va. Code § 62.1-44.3.
17. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
19. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
20. "SWM" means Stormwater Management
21. "SWPPP" means Stormwater Pollution Prevention Plan.
22. "TMDL" means Total Maximum Daily Load
23. "USGS" means the United States Geological Survey
24. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
25. "Va. Code" means the Code of Virginia (1950), as amended.
26. "VAC" means the Virginia Administrative Code.
27. "VPDES" means Virginia Pollutant Discharge Elimination System.

28. “VPPSA” means Virginia Peninsulas Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 et seq. VPPSA is a “person” within the meaning of Va. Code § 62.1-44.3.
29. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
30. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
31. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. VPPSA owns and operates the VPPSA Vehicle Maintenance Facility located in King and Queen County, Virginia, from which stormwater associated with construction activity is discharged.
2. DEQ is the VSMP authority for the Site.
3. VPPSA applied for and, on October 21, 2019, was granted coverage under the 2019 Permit, VAR10 of the General Permit Regulation. VPPSA was assigned registration number VAR10N318.
4. The 2019 Permit allows VPPSA to discharge stormwater associated with construction activities from the Facility to an unnamed tributary to Glebe Swamp, in strict compliance with the 2019 Permit.
5. The unnamed tributary to Glebe Swamp is located in the York River Basin. During the 2020 305(b)/303(d) Water Quality Assessment Integrated Report, the unnamed tributary was not assessed for any designated use; therefore, the stream is considered a Category 3A waterbody. The site is located within the study area for the Lower Mattaponi

Bacterial TMDL (EPA approval July 28, 2010, Board approval December 13, 2010). The discharge from the Site was not addressed in the TMDL.

6. The Site is located in the Chesapeake Bay watershed. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. The Glebe Swamp drains to the Mattaponi River oligohaline estuary. All regulated stormwater permits are considered to have an aggregated wasteload allocation. The stream is shown as an ephemeral ditch on the USGS topographic map and should be considered a Tier 1 water.
7. During the June 5, 2020 inspection, the notice of 2019 Permit coverage letter was not posted conspicuously near the main entrance of the construction activity.

2019 Permit Part II(D) states: "Public notification. Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity. For linear projects, the operator shall post the notice of coverage letter at a publicly accessible location near an active part of the construction project (e.g., where a pipeline crosses a public road). The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F."

8. During the June 5, 2020 and September 11, 2020 inspections, denuded areas were not stabilized and exhibited erosion.

2019 Permit Part II(B)(2)(c)(8) states: "Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days."

2019 Permit Part II(B)(5)(b)(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site."

9 VAC 25-840-40(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."

9. During the June 5, 2020 inspection, culvert inlet protection by the road was not installed in accordance with the approved erosion and sediment control plan and the storm drain inlet that accepts offsite runoff required maintenance.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(10) states: “All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

10. During the September 11, 2020 inspection, inlet protection was not installed in accordance with the approved erosion and sediment control plan.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(10) states: “All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.”

11. During the June 5, 2020 inspection, outlet protection was not installed as required by the erosion and sediment control plan.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

12. During the September 11, 2020 inspection, two outlet protections from the sediment basin were not installed in accordance with the approved erosion and sediment control plan. In addition, the stormwater conveyance channel, which discharges into the sediment basin, exhibited erosion.

9 VAC 25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities.”

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

13. During the June 5, 2020 and September 11, 2020 inspections, the onsite sediment basin was not stabilized and exhibited erosion along its banks.



9 VAC 25-840-60(a) states in part: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

2019 Permit Part II(B)(2)(c)(8) states: "Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days."

2019 Permit Part II(B)(5)(b)(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site."

9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

9 VAC 25-840-40(7) states: "Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

14. During the September 11, 2020 inspection, the silt fence, located below the safety fence, required maintenance and repair.

9 VAC 25-840-60(a) states in part: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

15. During the September 11, 2020 inspection, surface water impacts occurred immediately south of the sediment basin's outlet protection, outside of the approved Limits of Disturbance at the Site impacting approximately 100 feet of wetlands.

Va. Code § 62.1-44.5(A) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . [d]ischarge stormwater into state waters from . . . land disturbing activities."

9 VAC 25-870-310(A) states: "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from . . . land-disturbing activities."

16. During the January 7, 2021 inspection, the Site was not stabilized and the cut and fill slopes of the permanent SWM – BMP Basin exhibited groundwater seeps and erosion.

2019 Permit Part II(B)(2)(c)(8) states: "Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days."

2019 Permit Part II(B)(5)(b)(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site."

2019 Permit Part II(F)(1-2) states: "SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.

2. If site inspections required by Part II G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.

17. During the January 7, 2021 inspection, the permanent SWM outfall pipe, that bypasses the permanent SWM- Basin BMP conveyance channel, contained accumulated eroded sediment.

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."



2019 Permit Part II(F)(1) states: "SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II G identifies a control measure that is not operating effectively, corrective actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures."

18. The Department has not issued coverage under any permit or certificate to VPPSA other than under the 2019 Permit.
19. Based on the results of the June 5, 2020, September 11, 2020, and January 7, 2021 inspections, the Board concludes that VPPSA violated Va. Code § 62.1-44.5(A), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-54(G), 9 VAC 25-870-310(A), and the conditions of 2019 Permit Parts II(B)(2)(c)(8), II (B)(5)(b)(1), II(D), and II(F)(1-2), as described in paragraphs C(7) through C(18) of this Order.
20. PRO issued a Notice of Violation for the violations noted above as follows: NOV No. 2020-10-PRO-201, issued December 3, 2020.
21. On December 9, 2020, Department staff met with representatives of VPPSA to discuss the violations.
22. On December 2020, VPPSA provided a written response to the violations.
23. DEQ staff inspected the Facility on September 28, 2021 and verified that the violations as described in paragraphs C(7) through C(18), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders VPPSA and VPPSA agrees to:

1. Pay a civil charge of \$4,112.50 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

VPPSA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, VPPSA shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of VPPSA for good cause shown by VPPSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2020-10-PRO-201 dated December 3, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, VPPSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. VPPSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. VPPSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by VPPSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. VPPSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. VPPSA shall demonstrate that such circumstances were

beyond its control and not due to a lack of good faith or diligence on its part. VPPSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and VPPSA. Nevertheless, VPPSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after VPPSA has completed all of the requirements of the Order;
  - b. VPPSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to VPPSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve VPPSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by VPPSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of VPPSA certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind VPPSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of VPPSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, VPPSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
James Golden, Regional Director  
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

Virginia Peninsulas Public Service Authority voluntarily agrees to the issuance of this Order.

Date: 3-15-2022 By: David Magnant, EXECUTIVE DIRECTOR  
(Person) (Title)  
Virginia Peninsulas Public Service Authority

Commonwealth of Virginia  
City/County of Williamsburg

The foregoing document was signed and acknowledged before me this 15<sup>th</sup> day of

March, 2022 by David Magnant who is

Executive Director of Virginia Peninsulas Public Service Authority, on behalf of  
the authority.

Susan G. Waltrip  
Notary Public

284510

Registration No.

My commission expires: 06/30/2023

Notary seal:

